IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT
THE HON'BLE MR JUSTICE L.NARASIMHA REDDY
WRIT PETITION NO : 2338 of 2005

Between:
K. Prakash Goud S/o. Balaiah, Occ: Tapper,
R/o. H.No. 9-7-78/1, Maruthi Nagar, Champapet, Near Santhoshnagar, Hyderabad.
..... PETITIONER

AND

1 The Deputy Commissioner of Prohibition & Excise, Hyderabad Division, Nampally, Hyderabad.
2 The Prohibition & Excise Superintendent/ Functional Registrar of Toddy Co-op Societies, Ranga Reddy District.
3 President TCS Champapet of Ranga Reddy District.
.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ, more in nature of WRIT OF MANDAMUS declaring the order passed by the 1st respondent in Cr.No. E1/3759/2004 dt. 17-12-2004 as illegal and null and void and amounts to not exercising powers vested in it and consequently direct the 1st respondent to hear the said appeal and pass appropriate orders as per law and to pass such other or further orders as deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.K.MANIK PRABHU

Counsel for the Respondents 1 and 2 : GP FOR PROHIBITION & EXCISE

The Court made the following :

ORDER:

The petitioner submitted an application to the 2nd respondent seeking admission as a member into the society. Through resolution, dated 15.06.2004, the 2nd respondent refused to admit the petitioner as member. Aggrieved by the said resolution, the petitioner filed an appeal before the 1st respondent under Section 76 of the A.P.Cooperative Societies Act, 1964 (for short 'the Act') read with G.O.Ms.No.234, F & A (Co-op IV) Dept., dated 03.04.1979. The 1st respondent refused to entertain the appeal through his order, dated 17.12.2004. He relied upon the provisions of Sections 61(3) and 76(1) of the Act as amended through Act 22 of 2001. The same is challenged in this writ petition.

Heard learned counsel for the petitioner and learned Government Pleader for Excise.

It is true that the Government conferred powers under Sections 76 and 77 of the Act on the 1st respondent, through G.O.Ms.No.234, dated 03.04.1979. The appellate power was not restricted to

any category of orders. However, one aspect which needs to be taken note of is that by the time the appellate powers came to be conferred upon the 1st respondent, the order under Section 19(3) of the Act passed by the society, admitting or refusing to admit any person as member, was not appealable. Such orders were made appealable only through Act 22 of 2001. It is not in dispute that no orders were issued by the Government conferring any appellate power on the 1st respondent in respect of orders passed under Section 19(3) of the Act.

It is settled principle of law that appellate power is to be conferred by the Statute concerned or through a valid notification. It cannot be inferred from any attendant circumstances.

In that view of the matter, no exception can be taken to the refusal by the 1st respondent to entertain the appeal. The petitioner can approach the Cooperative Tribunal against the resolution, dated 15.06.2004, passed by the 2nd respondent. In view of the fact that the petitioner has been pursuing his remedy with the 1st respondent, the delay in approaching the Tribunal needs to be condoned.

For the foregoing reasons, the writ petition is disposed of, leaving it open to the petitioner to approach the Cooperative Tribunal by filing an appeal against the resolution, dated 15.06.2004. If the appeal is presented within four weeks from today, it shall be entertained as having been filed within the period of limitation. There shall be no order as to costs.

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23.02.2005

Note: Issue c.c in three days.
(B/o)
Jsu

To
1 The Deputy Commissioner of Prohibition & Excise, Hyderabad Division, Nampally, Hyderabad.
2 The Prohibition & Excise Superintendent/ Functional Registrar of Toddy Co-op Societies, Ranga Reddy District.
3 President TCS Champapet of Ranga Reddy District.
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